

Virginia Regulatory Town Hall

Periodic Review of Existing Regulations Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Exclusionary General Permit
VAC Number:	9 VAC 5 Chapter 500 (9 VAC 5-500-10 et seq.)
Date:	June 26, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25 and Executive Order Twenty-Five (98) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision, instead give a general description of the regulation.

The regulation establishes procedures for facility owners to obtain authority to operate under a general permit in order to avoid the necessity of obtaining a permit required under Title V of the Clean Air Act.

The purpose of the regulation is to provide a legally enforceable mechanism (general permit) for stationary sources subject to the federal operating permit program (Article 1 of 9 VAC 5 Chapter 80) to be excluded from the program provided they maintain their actual annual emissions at a specified level that is less than the potential to emit applicability thresholds for the federal operating permit program.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and, if available, web site addresses for locating the text of the cited legal provisions should be provided.

Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

There are no federal requirements that mandate the promulgation of this regulation.

State Requirements

Code of Virginia:

<http://leg1.state.va.us/000/cod/codec.htm>

Virginia Administrative Code (VAC):

<http://leg1.state.va.us/000/reg/toc.htm>

There are no state requirements that mandate the promulgation of this regulation.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. If no public comment was received, please include a statement indicating that fact

SUBJECT: Support for Retention of the Regulation

COMMENTER: Virginia Manufacturers Association and Lockheed Martin

TEXT: We strongly support the continuation of the Title V exclusionary general permit in its current form. This permit has provided a simple and effective means to report actual emissions from facilities. It has also kept facilities out of the Title V federal operating permit and Virginia state operating permit programs. This has resulted in simplified administrative burdens for both Virginia businesses and the Department of Environmental Quality (DEQ). We believe the exclusionary general permit regulation meets the established goals and the regulation is written clearly and is easily understandable. For all of these reasons, the DEQ should retain the general permit regulation in its current form without amendment.

Should the DEQ determine that the exclusionary general permit program will be terminated, all efforts should be made to extend the date for ending the program as far into the future as possible. If this program is terminated, sources currently covered by the general permit will need a significant amount of time to prepare the application required for a Title V federal operating permit or for a state operating permit to replace the exclusionary general permit. Also, after these companies submit their applications, DEQ will need additional time to issue the permits.

We only recently learned of the possible termination of the exclusionary general permit. Other than the notice in the Virginia Register, there has been no notification to affected sources that their exclusionary general permit may be terminated.

RESPONSE: Support for the general permit is appreciated. The agency has no plans to terminate the general permit as part of this periodic review action. This request for comments is one element of a periodic review process required by Executive Order 25(98) which requires agencies to solicit comment and determine whether the regulation should be terminated, amended, or retained in its current form. It is not intended to indicate that the agency is predisposed to take any particular action.

Effectiveness

Please provide a description of the specific and measurable regulatory goals of the regulation. Detail the effectiveness of the regulation in achieving such goals.

The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To minimize the regulatory burden of the federal operating permit program on smaller facilities.

Need

Please provide the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

Many stationary source requirements of the federal Clean Air Act (the Act) apply only to "major" sources. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. For instance, Title V operating permit requirements largely apply only to sources with emissions that exceed specified levels and are thus major. To determine whether a source is major, the Act focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, in situations where unrestricted operation of a source would result in a potential to emit above major-source levels, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold. Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) or by citizens in addition to the state agency.

As the deadlines for complying with the Title V operating permits approached, industry and state and local air pollution agencies became increasingly focused on the need to adopt and implement federally-enforceable mechanisms to limit emissions from sources that desire to limit potential emissions to below major source levels. In fact, there are numerous options available which can be tailored by the states to provide such sources with simple and effective ways to qualify as minor sources. Because there appeared to be some confusion and questions regarding how potential to emit limits may be established, EPA issued a guidance memo on January 25, 1995 which: (1) outlined the available approaches to establishing potential to emit limitations, (2) described developments related to the implementation of these various approaches, and (3) implemented a transition policy that will allow certain sources to be treated as minor for a period of time sufficient for these sources to obtain a federally-enforceable limit. The focus of this background document is on the transition policy.

EPA realized that most, if not all, states have recognized the need to develop options for limiting the potential emissions of sources and were moving forward with one or more of the strategies described in the EPA guidance memo in conjunction with the submission and implementation of their Title V operating permit programs. However, EPA was aware of the concern of states and sources that Title V implementation will move ahead of the development and implementation of these options, leaving sources with actual emissions clearly below the major source thresholds potentially subject to Title V requirements. Gaps could theoretically occur during the time period it takes for a state program to be designed and administratively adopted by the state, approved into the SIP by EPA, and implemented as needed to cover individual sources. In the case of Virginia, the state had adopted a state operating permit program that was approved by EPA for this purpose, but implementation of the program has been a problem due to the volume of sources affected.

The EPA remained concerned that even with expedited approvals and other strategies, sources may face gaps in the ability to acquire federally-enforceable potential to emit limits due to delays in state adoption or EPA approval of programs or in their implementation. In order to ensure that such gaps do not create adverse consequences for states or for sources, EPA announced a transition policy for a period up to January 25, 1997; however, by a subsequent guidance memo of August 27, 1996 EPA extended the transition period to July 31, 1998. By a memo of July 10, 1998, EPA granted a second extension of the policy to December 31, 1999. On December 20, 1999, EPA granted a third extension of the policy to December 31, 2000. States may request an additional 6 months extension. This latest memo indicates that this will be the last extension. The EPA made this transition policy available at the discretion of the state the extent there are sources which the state believes can benefit from such a transition policy. The transition period will extend from now until the gaps in program implementation are filled. The EPA guidance provides states discretion to use the a variety of options, one of which is described below, for satisfying potential to emit requirements during the transition period.

Sources maintaining emissions below 50 percent of all applicable major source requirements. For sources that typically and consistently maintain emissions significantly

below major source levels, relatively few benefits would be gained by making such sources subject to major source requirements under the Act. For this reason, many states are developing exclusionary rules and general permits to create simple, streamlined means to ensure that these sources are not considered major sources. To ease the burden on states' implementation of Title V, and to ensure that delays in EPA's approval of these types of programs will not cause an administrative burden on the states, EPA provided a transition period for sources that maintain their actual emissions, for every consecutive 12-month period, at levels that do not exceed 50 percent of any and all of the major stationary source thresholds applicable to that source. A source that exceeds the 50 percent threshold, without complying with major source requirements of the Act (or without otherwise limiting its potential to emit), could be subject to enforcement. For this transition period, such sources would not be treated as major sources and would not be required to obtain a permit that limits their potential to emit. To qualify under this transition policy, sources must maintain adequate records on site to demonstrate that emissions are maintained below these thresholds for the entire as major sources and would not be required to obtain a permit that limits their potential to emit that would be considered to be adequate during this transition period.

Alternatives

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Take no action to amend the regulation. This option was chosen because the current regulation provides the least onerous method for meeting the need.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option was not chosen because it could result in the imposition of requirements that place unreasonable hardships on the regulated community.
3. Amend the regulation to satisfy the provisions of the legally binding state or federal mandates. This option was not chosen because it could result in the imposition of requirements that place unreasonable hardships on the regulated community.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in fertility disorders, fetal mutation and deformity, chronic and acute illness, premature death, and property damage.

Recommendation

Please state whether the agency is recommending the regulation be retained and the reasons such a recommendation is being made.

The regulation is being recommended for retention because it still serves its purpose and has been effective in achieving its goals.